United Nations A/56/224

General Assembly

Distr.: General
27 July 2001
English
Original: Spanish

Fifty-sixth session
Item 130 of the provisional agenda*
Right of peoples to self-determination

Use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with General Assembly resolution 55/86 of 4 December 2000, the report prepared by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur on the question of the use of mercenaries.

* A/56/150.

** In accordance with section C, paragraph 1, of General Assembly resolution 54/248, this report is being submitted on 27 July 2001 so as to include as much up-to-date information as possible.

01-47130 (E) 170901 210901

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by the Special Rapporteur of the Commission on Human Rights

Contents

		Paragraphs	*Page*
I.	Introduction	1–9	3
II.	Activities of the Special Rapporteur	10–26	4
	A. Implementation of the programme of activities	10–11	4
	B. Correspondence	12–26	4
III.	The first meeting of experts	27–39	10
IV.	Mercenary activities in Africa	40–59	11
V.	Current status of mercenary activities	60–70	14
VI.	Private security and military assistance companies operating internationally	71–81	15
VII.	Contributions to the legal definition of mercenary	82–89	17
VIII.	Current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries	90–92	19
IX.	Conclusions	93–109	19
X.	Recommendations	110–118	21

I. Introduction

1. During its fifty-fifth session, the General Assembly adopted resolution 55/86 of 4 December 2000 by which, inter alia, it decided to consider at its fifty-sixth session the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. It requested the Special Rapporteur to report his findings on the use of mercenaries to undermine the right of peoples to self-determination, with specific recommendations, to the General Assembly at its fifty-sixth session. It should be pointed out that the General Assembly recognized that armed conflict, terrorism, arms trafficking and covert operations by third Powers, inter alia, encourage the demand for mercenaries on the global market and reaffirmed that the recruitment, use, financing and training of mercenaries are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations.

2. The General Assembly urged all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to take the necessary legislative measures to ensure that their territories and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries for the planning of activities designed to destabilize or overthrow the Government of any State or threaten the territorial integrity and political unity of sovereign States, or to promote secession or to fight the national liberation movements struggling against colonial or other forms of alien domination or occupation.

3. It invited all States to investigate the possibility of mercenary involvement whenever criminal acts of a terrorist nature occur and to cooperate fully with the Special Rapporteur in the fulfilment of his mandate, and called upon all States that had not yet done so to consider signing or ratifying the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The General Assembly welcomed the adoption by some States of legislation restricting the recruitment, assembly, financing, training and transit of mercenaries and it welcomed the cooperation extended by those countries that had received visits from the Special Rapporteur.

4. The General Assembly urged the United Nations High Commissioner for Human Rights to convene a workshop on the traditional and new forms of activities of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination before the fifty-seventh session of the Commission on Human Rights so that a report on the outcome of the workshop might be submitted to the Commission at that session. It also requested the Office of the United Nations High Commissioner for Human Rights, as a matter of priority to be programmed in its immediate activities, to publicize the adverse effects of the activities of mercenaries on the right to self-determination and, when requested and where necessary, to render advisory services to States affected by the activities of mercenaries.

5. In this regard, the Special Rapporteur wishes to report that a first workshop was held in Geneva from 29 January to 2 February 2001. The report on the outcome of the workshop is contained in document A/CN.4/2001/18. An information leaflet on the adverse effects of the activities of mercenaries on the right to self-determination has been prepared and is in the process of being published by the Office of the High Commissioner. A second workshop is to be held in the coming months.

6. On 6 April 2001, at its fifty-seventh session, the Commission on Human Rights adopted resolution 2001/3 whereby it, inter alia, reaffirmed that the use of mercenaries and their recruitment, financing and training are causes for grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations; recognized that armed conflicts, terrorism, arms trafficking and covert operations by third Powers, inter alia, encourage the demand for mercenaries on the global market; called upon all States to consider taking the necessary action to sign or ratify the International Convention and invited them to investigate the possibility of mercenary involvement whenever and wherever criminal acts of a terrorist nature occur.

7. The Commission on Human Rights welcomed the convening by the Office of the United Nations High Commissioner for Human Rights of the workshop on the traditional and new forms of mercenary activities and took note of the report on the outcome of that meeting as a valuable contribution to the process of elaborating a clearer legal definition of mercenaries that would make for more efficient prevention and

punishment of mercenary activities. It decided to renew the mandate of the Special Rapporteur for a period of three years and requested him to consult States, intergovernmental and non-governmental organizations in the implementation of the resolution and to report, with specific recommendations, his findings on the use of mercenaries to undermine the right to self-determination to the Commission at its fifty-eighth session.

8. It should be pointed out that the Commission requested the Special Rapporteur to continue taking into account in the discharge of his mandate that mercenary activities are continuing to occur in many parts of the world and are taking on new forms, manifestations and modalities. It requested the United Nations High Commissioner for Human Rights to provide the Special Rapporteur with all the necessary assistance and support for the fulfilment of his mandate, including through the promotion of cooperation between the Special Rapporteur and other components of the United Nations system that deal with countering mercenary-related activities, and, as a matter of priority, to publicize the adverse effects of mercenary activities on the right of peoples to self-determination. It also requested the Office of the High Commissioner for Human Rights, when requested and where necessary, to render advisory services to States affected by the activities of mercenaries.

9. Accordingly, and pursuant to the above-mentioned resolution 55/86, the Special Rapporteur has the honour to submit this report to the General Assembly for consideration at its fifty-sixth session.

II. Activities of the Special Rapporteur

A. Implementation of the programme of activities

10. The Special Rapporteur submitted his report to the Commission on Human Rights on 22 March 2001. While in Geneva, the Special Rapporteur held consultations with representatives of various States and met with members of non-governmental organizations. He also held coordination meetings with the Activities and Programmes Branch of the Office of the United Nations High Commissioner for Human Rights.

11. The Special Rapporteur returned to Geneva on two occasions, from 21 to 25 May 2001 and from 9 to 12 July 2001, to hold various consultations, take part in the second session of the Preparatory Committee for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and draft this report.

B. Correspondence

12. Pursuant to resolutions 55/86 of the General Assembly and 2001/3 of the Commission on Human Rights, the Special Rapporteur sent a communication on 16 June 2001 to all States Members of the Organization, requesting the following: (a) information on the possible existence of any recent mercenary activities (recruitment, financing, training, assembly, transit or use of mercenaries); (b) participation by nationals of their country as mercenaries in committing acts against the sovereignty of other States, the exercise of the right to self-determination by other peoples and the enjoyment of human rights; (c) information on the possible existence of mercenary activities in the territory of another country against the State; (d) information on the possible participation of mercenaries in committing internationally wrongful acts such as terrorist attacks, formation of and support for death squads and paramilitary organizations, trafficking in and kidnapping of persons, drug trafficking, arms trafficking and smuggling; (e) information on existing domestic legislation and on treaties outlawing mercenary activities to which the State is party; (f) suggestions for enhancing the international treatment of the topic, including suggestions for a clearer definition of mercenaries; and, lastly, (g) information and views on private security service and military advice and training companies.

13. In a letter dated 9 March 2001, the Minister for Foreign Affairs of El Salvador, María Eugenia Brizuela de Ávila, stated the following:

> "With a view to cooperating with the Special Rapporteur in the performance of his mandate, I have the pleasure, on behalf of the Government of El Salvador, to extend to him an invitation to visit the country so that he may obtain direct knowledge of the matter in question, relating to criminal acts of a mercenary character reported by the Cuban authorities.

"My Government has been collaborating with the Special Rapporteur, providing the information requested, and in that spirit considers that the visit will serve to broaden the contacts established and contribute to clarifying situations of mutual interest.

"The date of the visit shall be as best suits the Special Rapporteur; we ask him to communicate his decision so that we may organize a programme of activities for him, work out any necessary details and meet his needs.

"I should appreciate your making the effort to visit my country, which hereby offers you all the attention and collaboration necessary for the success of the visit."

14. The Special Rapporteur, at a meeting held on 12 March 2001 with the Permanent Representative and the Deputy Permanent Representative of El Salvador to the United Nations Office at Geneva and in a letter dated 10 July 2001, addressed to the Minister for Foreign Affairs of El Salvador, expressed thanks for the invitation extended to him to visit El Salvador on an official mission within the framework of the investigation of terrorist activities carried out in Cuba by mercenaries. The Special Rapporteur hopes to visit that country in the context of visits to other countries in the region and is coordinating the dates of such a visit with the Ministry of Foreign Affairs of El Salvador.

15. By a note verbale of 29 March 2001, the Permanent Mission of the United States of America to the United Nations Office at Geneva replied to the Special Rapporteur's letter of 7 December 2000 (see E/CN.4/2001/19, para. 21), as follows:

"As reported to the Special Rapporteur in a previous note, the Federal Bureau of Investigation has a pending investigation into these allegations. It is [its] policy not to discuss the status of pending investigations, so the information we can provide to him is extremely limited. Unfortunately, the United States Government has not received an answer to [its] request to the Cuban Government for assistance with the investigation.

"In answer to his question on Luis Posada Carriles: the United States Government has no record showing that he was or is a United States citizen."

16. In a letter of 26 June 2001, addressed to the Secretary of State of the United States of America, the Special Rapporteur expressed thanks for the support provided for his mandate by the Government of that country and requested an official invitation to visit the United States of America. The Special Rapporteur pointed out that such a visit would enable him to engage in a dialogue with Government authorities and representatives of academic and non-governmental communities in the United States concerning the relationship between mercenaries and terrorism and between mercenary activities and trafficking in persons, weapons and drugs, and also concerning recourse to the use of mercenaries by organizations of exiles seeking to overthrow the Governments of their countries. The Special Rapporteur expressed the wish to have more detailed knowledge of available information and of the position of the United States Government on certain Cuban-American organizations established in southern Florida that allegedly make use of mercenaries to carry out activities in Cuba in contravention of international law, such as those carried out against tourist facilities in that country from 1996 to 1998. The visit would be in line with those made by the Special Rapporteur to South Africa in 1996 and to the United Kingdom of Great Britain and Northern Ireland in 1999 for the purpose of studying the question of the use of mercenaries by private security companies that offer military assistance and advisory services on the international market.

17. In a letter dated 10 July 2001 addressed to the Minister for Foreign Affairs of Panama, Mr. José Miguel Alemán Healy, the Special Rapporteur asked about the juridical situation and the legal proceedings instituted against Luis Posada Carriles, Gaspar Jiménez Escobedo, Guillermo Novo Sampol and Pedro Remón, Cuban nationals, reported to have entered Panama illegally with the intention of carrying out a criminal attack against the person of Fidel Castro Ruz, Head of State of the Republic of Cuba, during the tenth Ibero-American Summit. The Special Rapporteur requested an official invitation to visit Panama in order to meet with Government officials and authorities of that country and interview the detainees. The Special Rapporteur feels that such interviews might help to clear up definitively the series of criminal attacks having a mercenary component that have been carried out in Latin American countries during the past 40 years.

18. The Special Rapporteur also wrote to the Minister for Foreign Affairs of Peru, Mr. Javier Pérez de Cuéllar, apprising him that he had been informed that, between 1997 and 1999, Israeli military officers had allegedly trained an elite unit, known as the "Zeus Group", made up of officers of the Peruvian army and members of the national police and that the commando force had allegedly been charged, among other tasks, with protecting and ensuring the personal safety of Vladimiro Montesinos Torres, then principal adviser to the National Intelligence Service. The Israeli military staff had reportedly entered and left Peru secretly or under cover via a military airport, that belonging to Air Group No. 8. The coordinator of the group of instructors was said to have been Isaac Barnet, reportedly an intelligence officer in the Israeli army. The members of the "Zeus Group", who reportedly numbered more than a thousand, had had as their chief Colonel Oscar Cáceres Rodríguez of the Peruvian army, a commando school officer attached to the National Intelligence Service since 1993. The training had reportedly included courses in the protection of dignitaries, attack and defence techniques and operations involving residential raids, assaults on vehicles and release of hostages, and had been carried out with Israeli "Galli" rifles acquired from alleged arms traffickers James Stone Cohen and Ilan Weil Levy.

19. The Special Rapporteur requested official information from the Government of Peru regarding those facts. In particular, he asked whether officers of the armed forces of Israel had been present in Peru during the period from 1997 to 1999 and, if so, whether that presence had occurred within the context of official agreements between the two States; whether the instructors of the "Zeus Group" had been active or reserve officers of the Israeli army; and whether they had been sent on an official mission by the Government of that country or had been recruited under private contracts. He requested information regarding where and how they had been recruited and hired, what remuneration they had received and what relationship they had had with the purchase of Israeli arms. In particular, the Special Rapporteur inquired whether those instructors had belonged to, or been recruited or hired by or through, a military security service company.

20. The Government of Peru has reported that it is processing its reply to the communication referred to above. It should be mentioned, however, that it is common knowledge that Vladimiro Montesinos Torres has been indicted on 54 counts for various acts characterized as crimes under Peruvian law. Some of the charges relate to unlawful acts covered by human rights treaties to which Peru is a party. The investigations conducted in connection with flagrant human rights violations, such as the Barrios Altos assassinations, in which 17 persons were executed in November 1991; the forced disappearance and subsequent assassination of nine students and a professor of Universidad Pedagógica Guzmán y Valle (La Cantuta) in July 1992; and the assassination of an intelligence agent named Mariella Barreto and the torture of another, Leonor La Rosa, in early 1997, have resulted in the identification, as perpetrators of those crimes, of military personnel under the orders of the National Intelligence Service, some of them belonging to the so-called "Colina Group".

21. The same investigations have revealed that the latter group was under the direct orders of former presidential adviser Vladimiro Montesinos, who has been charged with forming and training that group and elaborating the plans and orders for the commission of the crimes attributed to the group. It is hoped that an impartial investigation will reveal who trained this assassination group, but it is valid to take into account the formation and criminal activity of the "Colina Group". Several years later, during 1997, Montesinos took decisions of a military and political nature that were outside his functions as presidential adviser and contrary to military and police laws and regulations. Within this context, he decided to form elite groups which were charged with protecting him and with other missions assigned directly by him. Israeli military officers, allegedly contracted by the National Intelligence Service — although there are no public documents indicating the validity of the authorization or the purpose for which they were hired — arrived in Lima and provided sophisticated military training for one of those groups, the "Zeus Group". Such a decision could be taken only within the framework of bilateral agreements relating to military matters between States. The Republic of Peru apparently has no agreements of that type with the State of Israel, nor do we know of any special invitations to hire foreign officers expert in military and commando training for special operations.

22. The Special Rapporteur considers it must be clearly established whether the foreign personnel that

conducted that training were sent to Peru within the framework of any military assistance agreement or convention between the two States. Should that prove not to be the case, it must be determined who authorized the hiring of the foreign military personnel and in what capacity they arrived in Peru and offered sophisticated military training to the groups operating directly under the orders of Vladimiro Montesinos. Full knowledge of the truth of this matter is indispensable. Confidential military sources have maintained before the Special Rapporteur that such foreign officers should be considered mercenaries hired by Vladimiro Montesinos, who, exercising State powers which he did not possess, brought those officers to Peru to train groups entrusted with the conduct of secret actions not in accord with military and police laws and regulations.

23. The criminal record of the "Colina Group" and the wide range of unlawful activities in which Montesinos was involved give rise to the suspicion that the groups which acted as his own personal force for protection and other purposes also carried on unlawful activities. If mercenaries were hired to train the groups — which were set up on the fringes of military and police laws and regulations — that is something which absolutely must be known, since that fact, in itself, is contrary to international norms.

24. By a note verbale of 11 July 2001, the Permanent Mission of Cuba to the United Nations Office at Geneva replied to the Special Rapporteur's request for information, as follows:

> "The Government of the Republic of Cuba attaches immense importance to the efforts made in the framework of the United Nations system with a view to condemning and combating the recruitment, use, financing and training of mercenaries. Particularly important is the monitoring by the General Assembly and the Commission on Human Rights of the adverse impact of mercenary activities on the enjoyment of all human rights, including the right of peoples to self-determination.
>
> "The adoption of the 1989 Convention by means of General Assembly resolution 44/34 was a landmark in the development of an international legal framework for combating mercenary activities, despite the limitations which, in our opinion, characterize that instrument.
>
> "Cuba considers that there is a fundamental need to promote ratification of the 1989 Convention by States that have not yet done so in order to permit its entry into force, and is itself immersed in the required domestic procedures with a view to the possible ratification of that instrument.
>
> "Cuba has previously transmitted to the Office of the United Nations High Commissioner for Human Rights its contributions and views regarding action which should be taken for a possible strengthening of the international legislative framework for combating the use of mercenaries. Some of these views are reiterated in this note.
>
> "The Government of the Republic of Cuba wishes to take this opportunity to express its satisfaction that the Office of the United Nations High Commissioner for Human Rights has convened a meeting of experts to examine the question of the progressive development of the international legal framework for combating mercenary activities in all their forms and manifestations, as repeatedly requested in resolutions of the General Assembly and the Commission on Human Rights.
>
> "Mercenary activities were defined in the Cuban Penal Code of 1979. The definition of such activities was reproduced verbatim in article 119 of the Penal Code of 1998, currently in force. Cuba considers that the definition of mercenaries set out in article 1 of the 1989 Convention does not take sufficient account of the various manifestations of mercenary activity and, furthermore, lays down excessive requirements for characterizing mercenaries as such, essentially because it requires that those manifestations appear concurrently. The Cuban Government has stated that it is inappropriate to use as a criterion for the definition of mercenaries the amount of remuneration received for carrying out mercenary activities.
>
> "Moreover, to exclude from the definition of mercenaries nationals who, in exchange for remuneration, act against the interests of their own country in the service of a foreign Power or interest particularly weakens its scope. Cuba has recently made specific proposals concerning a

possible reformulation of the concept of mercenaries which remain fully relevant.

"The Government of the Republic of Cuba attaches special significance to the discharge of the mandate of the Special Rapporteur of the Commission on the question of mercenaries and is therefore doing its utmost to intensify its cooperation with Mr. Enrique Bernales Ballesteros, who has been acting in that capacity with great professionalism.

"In response to an invitation from the Cuban Government, Mr. Bernales Ballesteros paid a fruitful visit to the country, during which he was presented with abundant testimony and documentary evidence concerning the mercenary activities carried out against Cuba in recent years. The evidence directly involves organizations and persons residing in countries geographically close to Cuba, whence they operate; accordingly, the Cuban Government calls upon the Governments of the States concerned, particularly the Government of the United States of America, to consider the possibility of inviting the Special Rapporteur to visit them.

"For over forty years, acts of aggression and terrorism against Cuba involving the use of mercenaries have been part of the United States Government's policy of hostility towards the Cuban revolution.

"Numerous mercenary actions against Cuba are promoted, organized, prepared and financed from the territory of the United States. The terrorist organization Cuban-American National Foundation, with total impunity and the undeniable complicity of the United States authorities, organizes and finances the recruitment and training of mercenaries for use against our country, in most cases in acts of terrorism.

"In this context, Cuba also condemns unequivocally all acts, methods and practices of terrorism in all its forms and manifestations, wherever and by whomsoever they are committed.

"As in the case of mercenary activities, and bearing in mind the close relationship between mercenarism and terrorism, Cuba has participated actively in the activities and efforts of the United Nations to combat international terrorism and, although it acknowledges that the outcome of such efforts has sometimes been localized or of limited scope, it has supported them in the firm conviction that in this field the contribution of the United Nations and of the international community as a whole is an urgent matter of priority.

"Cuba is in favour of the appropriate codification of a series of elements which form an inseparable part of the struggle against terrorism in all its forms and manifestations such as efforts to combat the funding of international terrorism and the use of the territory of one State for the organization of terrorist acts against another State and the training of perpetrators of such acts.

"True to this tradition, Cuba has continued to insist in international forums that State terrorism and terrorist acts encouraged or tolerated by States must be unequivocally condemned in the context of the condemnation of terrorist acts, methods and practices in all their forms and manifestations wherever and by whomever they are committed. The activities of one State aimed at destabilizing another by sponsoring, training and financing terrorist elements to act against the other State, and providing them with resources and protection in its territory or elsewhere, must also be defined and condemned.

"In addition to the long list of mercenary activities with an evident terrorist purpose documented earlier by the Government of Cuba, there are other more recent activities which prove that such practices are still continuing and are intended to impede and deny the right of the Cuban people to exercise their right to self-determination.

"On 26 April 2001, Cuban border guards detected and detained 3 mercenaries coming from the territory of the United States who were attempting to penetrate deep into the territory of the Republic of Cuba in order to carry out terrorist plans.

"The names of the three mercenaries, of Cuban origin, are: Ihosvani Suris de la Torre, the

head of the group, Máximo Pradera Valdés and Santiago Padrón Quintero.

"Four AK-47 rifles of Romanian manufacture, one M-3 rifle, three Makarov pistols, night vision devices, a cellphone together with other munitions and a considerable sum of money were taken from the three individuals mentioned.

"According to the voluntary confession of one of the detained persons, the group planned to carry out further terrorist attacks against Cuban tourist facilities and to simulate a counter-revolutionary uprising by supposed members of the Cuban Revolutionary Armed Forces in the centre of the island.

"The mercenaries arrested also named the persons who had directed, organized and directly financed the operation, who are known terrorists and leaders of groups linked with the Cuban-American National Foundation.

"All the preparations for this mercenary action were made in Miami, Florida, in full view of the state and federal authorities of the United States. Those involved openly bought stocks of weapons and received training in military training facilities publicly maintained by terrorist organizations of Cuban origin such as Alfa 66 in Florida.

"It is well-known that a plan to assassinate President Fidel Castro organized by the Cuban-American National Foundation was foiled in Panama on 17 November 2000 thanks to information provided by Cuba. One of the main perpetrators of the attack was to have been the well-known international terrorist Luis Posada Carriles; he is now under arrest in Panama.

"Another three persons who were residents of the United States and linked with terrorist organizations having their headquarters in that country were arrested together with him as accomplices. All of them had an extensive record of carrying out such acts. Their names are Pedro Remón Rodríguez, Guillermo Novo Sampoll and Gaspar Jiménez Escobedo.

"They were in possession of 20 kilograms of C-4 explosives and 50 packets of Semtex, plans of the auditorium of the University of Panama and other evidence that they were preparing to blow up the premises during the meeting that President Fidel Castro was to have with thousands of Panamanian students. They could also have acted against other events at the Ibero-American Summit and seriously endangered the life of the other Presidents participating.

"Posada Carriles was trained by the Central Intelligence Agency and worked as an official of that organization to bring together the most aggressive mercenary groups of Cuban origin. He was responsible for blowing up a Cubana de Aviación passenger aircraft in flight, in 1976, over Barbados and, in 1997, he organized the bombing campaign in Havana hotels using Central American mercenaries some of whom were arrested and punished in Cuba.

"The Cuban authorities formally requested the Government of Panama to extradite Posada Carriles and the other terrorists, giving full assurances that they would receive due process, that they would not face the death penalty and that they would not be sentenced to more than 20 years in prison. Cuba also proposed that they should be tried in Havana by an international Latin American tribunal.

"In spite of that, the Panamanian Government refused to extradite him.

"Immense pressure was brought to bear on this process by the Government of the United States to prevent the extradition of the group of terrorists. There was nothing surprising about that because successive administrations over several decades have organized, financed and carried out numerous terrorist acts against Cuba using such mercenaries.

"These new instances of mercenarism linked to terrorism are a further demonstration of how important it is for the international community to keep mobilized in the fight against such practices in all their forms and manifestations, given their direct impact on the enjoyment of all human rights, in particular the right of peoples to self-determination".

25. By the time the communication was received from the Government of Cuba, the Special Rapporteur

had finished the preparation of this report. The claim that three people coming from the state of Florida in the United States attempted secretly to enter Cuban territory will be investigated by the Special Rapporteur, so as to determine the purpose of committing terrorist acts in Cuban territory and to explore fully the mercenary aspect of the plan.

26. By a note verbale dated 11 July 2001, the Permanent Mission of the Republic of Maldives to the United Nations replied to the circular letter from the Special Rapporteur, as follows:

> "There is no information on the existence or the use of mercenaries in the territory of Maldives in the recent past.
>
> "Maldives is a State party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Maldives firmly believes that the early entry into force of the Convention and achieving universality for the Convention would contribute effectively to the fight against the activities of mercenaries".

III. The first meeting of experts

27. In compliance with resolutions 54/151 of the General Assembly, of 17 December 1999, and 2000/3 of the Commission on Human Rights, the Office of the High Commissioner for Human Rights organized the first of two meetings of experts on the subject of mercenaries which were convened to study the forms currently taken by mercenary activities and to propose recommendations for an updated legal definition of the concept of mercenary.

28. The meeting was held in Geneva in the last week of January 2001 and was attended by eight invited experts and by the Special Rapporteur. The detailed and extensive analysis comprised aspects relating to the evolution of mercenaries over time, the means employed by mercenaries, the most visible cases of such activities, the problems raised by the current definition of mercenary under international law and ways of strengthening the United Nations in pursuing its aim to put an end to mercenary activities throughout the world.

29. The subjects addressed included study of the background to the approach of the United Nations to the phenomenon of mercenaries; the state of international legislation on that subject, with special emphasis on article 47 of Additional Protocol I to the Geneva Conventions, regional legislation, particularly the Organization of African Unity Convention; national legislation and evaluation of the means used to implement existing legislation.

30. The analysis of the international definition of mercenaries warranted particular emphasis, also bearing in mind aspects relating to the legal framework of the issue and the difficulties of considering the various forms taken by the mercenary component. The meeting also addressed case studies such as the presence of mercenaries in Africa and the national cases of the Russian Federation and Colombia.

31. The report of the meeting is of great importance and the Special Rapporteur would like to point out that the meeting served to emphasize that mercenary activities have increased and diversified thereby exacerbating the problem of the lack of an appropriate legal framework which would not only contain in its definition the various forms taken by mercenary activity but from which punitive standards would be derived. The meeting also agreed on the need to expand the mandate of the Special Rapporteur, bearing in mind the violations of human rights resulting from such activities as illicit arms trafficking, drug trafficking, terrorist acts and other unlawful acts committed with the participation of mercenaries.

32. It should also be pointed out that the meeting of experts spent some of its time discussing the considerable increase in private security companies offering services in the military field. The experts were not opposed to the operation of such firms on the international market, recognizing, in particular, that they were efficient firms offering a wide range of services. However, the experts agreed in stating their disapproval of the participation of such firms in armed conflicts through mercenary units forming private armies. In that connection they pointed out that States had an obligation to exercise control so as to prohibit security firms from participating in armed conflicts, creating private armies, engaging in illicit arms trafficking, being involved in the illegal extraction of natural resources and, in that context, employing mercenaries.

33. Another point the Special Rapporteur would like to stress is that the experts did not feel that mercenary

activities should be considered solely in connection with situations impeding self-determination. That is, of course, one of the rights that mercenaries violate, but there are other violations of human rights and international humanitarian law that should also be considered. The experts tended to see mercenary activity as a criminal act that could result in grave violations of the human rights of those affected by their actions.

34. Lastly, the group of experts accorded special importance to a systematic review of the definition of mercenary, noting that the elements in a new or broader definition of mercenary should include motive, purpose, payment, type of action and nationality. They also said that the definition should leave open the possibility of a connection between the mercenary act and other crimes, such as terrorism, arms trafficking and organized crime, in which mercenaries might be directly or indirectly involved.

35. Although the second expert meeting has not yet been convened, the Special Rapporteur believes that the General Assembly could take into account the conclusions and recommendations of the first meeting in its efforts to bring up to date its condemnation of mercenary activities and to warn the peoples of the world that tolerating such activities posed a threat to self-determination and human rights.

36. The experts did, moreover, make important contributions towards a modern legal definition of what constitutes a mercenary, leaving no doubt about the negative effects of the mercenary activities and the scope and diversity of the methods by which they operate. Certainly, none of those methods contributes to collective security, peace and universal respect for human rights.

37. One of the first positive effects of the expert meeting and its conclusions has been the adoption by the Commission on Human Rights at its recent session of resolution 2001/3 renewing the Special Rapporteur's mandate for another three years. Although it does not endorse all details of the experts' proposals, it does clearly expand the Rapporteur's mandate, requesting him to examine the various forms and criminal connections that mercenary activities may have.

38. With greater support from the General Assembly and the Commission, the Special Rapporteur will thus be enabled to continue to investigate such phenomena as the role of mercenaries in internal or international armed conflicts affecting the right of peoples to self-determination and at the same time to consider other phenomena in which mercenaries have a criminal involvement, such as illicit trafficking, terrorism and the formation of mercenary teams by private security companies, which use them to intervene in the internal affairs of States with which the companies sign contracts.

39. It is to be hoped that at their second meeting the experts will carry their thinking even further. It will be particularly interesting to see if they can progress to more specific wording on, for example, the legal definition of mercenary, the rules that should govern private companies that offer security services on the international market or amendments to the provisions of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The General Assembly's support for and encouragement of the work of the expert group are therefore highly important.

IV. Mercenary activities in Africa

40. One of the chief motives for creating the function of Special Rapporteur on the use of mercenaries was the intention of the United Nations to contribute to the effective exercise of the right of the African peoples to self-determination. Unfortunately, 14 years later, peace continues to elude many of the peoples of Africa. In many parts of the continent armed conflicts, sometimes of regional scope, are destroying the lives of thousands of Africans. Mercenaries are involved in many of these conflicts, through training contracts, direct participation in combat or involvement in the illicit trafficking that proliferates in areas affected by armed conflict.

41. The end of the cold war and of the apartheid system, which used to be major threats to the freedom of peoples who had recently achieved independence, has not, as hoped, meant an end to confrontations and conflicting interests in Africa. Instead, there has been serious social and political disintegration accompanied by armed conflict. The facts testify to serious situations, deterioration of the nation State, grave crises threatening government stability and dogged struggles for the control of rich natural resources, including petroleum and mineral deposits. Wars are being fought for control of rich diamond deposits. Diamonds are a factor in the ongoing conflicts in

Angola, the Democratic Republic of the Congo, Liberia and Sierra Leone and the developing conflict in Southern Guinea.

42. In Côte d'Ivoire, hundreds died in October 2000 as a result of street violence following the presidential elections, when the leader of the military junta, General Robert Guei, suspended the vote recount that was going in favour of his opponent, Laurent Gbagbo. Hundreds more died in the Central African Republic following a failed coup attempt by the former dictator, General André Kolingba, in late May 2001.

43. Through the Revolutionary United Front in Sierra Leone, Liberia controls diamond production in Sierra Leone and is benefiting heavily from smuggling precious stones. Its smuggling activity enables the Revolutionary United Front to purchase arms, which fuel the continued conflict, despite the signing of ceasefire agreements. Liberian President Charles Taylor and Front are also financing and arming the group known as the "Rassemblement des Forces Democratiques de Guinée", which aims at deposing Guinean President Lansansa Conté.

44. Since August 2000, the combined forces of the Liberian army and guerrilla fighters of the Revolutionary United Front have made forays to attack refugee camps in the south of Guinea in pursuit of militants in the Liberian Ultimo-K movement opposed to President Taylor. In addition to infantry, the attacks have been carried out with helicopters and heavy artillery.

45. The long series of armed conflicts on the continent involving a mercenary element shows that the exercise of the right to self-determination by the African peoples, or for that matter their control over their own natural resources or the rational utilization of them, is by no means assured.

46. The problems in Africa have only worsened, particularly in the western portion of the continent, rich in high-quality diamonds and in mineral and petroleum resources, which arouse the greed of unscrupulous politicians, merchants operating in the global market and members of criminal organizations who enrich themselves by plundering and smuggling gems and precious stones. As might be expected, mercenaries are no strangers to these criminal activities.

47. In his earlier reports, the Special Rapporteur mentioned the involvement of mercenaries in armed conflicts in Angola, Chad, Liberia, Mozambique, Namibia, Rwanda, Somalia, the Sudan, what was then Zaire, Zambia and Zimbabwe. The Special Rapporteur also discussed the political instability, nearly always accompanied by armed violence, that afflicted Benin, Botswana, Burundi, Cameroon, the Comoros, Djibouti, Lesotho, the Niger and Togo and the use of mercenaries by the racist regime of South Africa. The apartheid regime used to resort to mercenaries to destabilize political regimes considered to be socialist or unfriendly Governments and to attack the leaders of the African National Congress, an example being the assassination of Chris Hani by a Polish mercenary in April 1993.

48. The Special Rapporteur's reports show that those conflicts revolved around the exercise of the right to self-determination of the African peoples. Today, however, the conflicts appear to revolve around a different problem namely, control of natural resources such as petroleum, uranium, magnesium, bauxite and, above all, diamonds and other precious stones. Greed to possess them is now the chief motive for destabilizing legitimate governments, arming rebel groups and inciting internal conflicts. Those who, from Europe, control the markets in precious stones, particularly gemstones and diamonds, are not uninvolved in these conflicts.

49. Liberia's involvement in the illicit traffic in diamonds has led to the imposition of trade sanctions against that country, including those adopted by the Security Council in its resolution 1343 (2001) of 7 March 2001, which went into effect on 7 May 2001.

50. The União Nacional para a Independência Total de Angola (UNITA) has been trading diamonds for arms purchased from Eastern Europe by way of Togo, Israel (Tel Aviv) and the United Kingdom (London). With money obtained from exporting to Antwerp diamonds mined in northern Angola, UNITA buys weapons in Bulgaria. The proceeds of diamond trafficking, estimated at between 3 and 4 billion United States dollars, has enabled UNITA to build up its armed units and strengthen its combat positions by hiring mercenaries. The Special Rapporteur has pointed out on earlier occasions that there is a need to correct serious flaws in the system for monitoring the sanctions imposed on UNITA by the United Nations and the prohibition on the mining and selling of diamonds in the areas controlled by UNITA, which have been in place since 1998. Despite that prohibition,

it appears that Canadian stock exchanges continue to list the stock of firms that operate diamond mines in the areas controlled by UNITA.

51. The Chairman of the Security Council Committee established pursuant to resolution 864 (1993) concerning the situation in Angola, in his letter of 10 March 2000 addressed to the President of the Security Council (S/2000/203), confirmed that his Committee had received reports that instructors in foreign weapons were working for UNITA, particularly with the mechanized units. The instructors were usually provided by the sellers of the weapons. Among the foreign military personnel collaborating with UNITA were to be found Russians, Ukrainians, Bulgarians and South Africans. Information which the international press attributes to a Western intelligence service mentions ties between UNITA leaders, the Russian mafia, Lebanese terrorist organizations and Belgian businessmen, who have allegedly set up an illicit traffic in diamonds that brings them substantial profits. The role of mercenaries in this traffic is to get the precious stones safely out of Angola and onto planes bound for Europe.

52. The Antwerp market is under strong suspicion of benefiting heavily from this illicit diamond trade, which amounts to several billion dollars annually. As mentioned above, the diamonds apparently are sent to Antwerp from Angola via Togo, Tel Aviv and London. The mercenaries involved in the traffic are said to be recruited in London. It is said that the Angolan conflict, which has worsened since 1998, when UNITA ceased to comply with the Lusaka Protocol, could not continue if the illicit traffic in diamonds were stopped. In May 2001, UNITA kidnapped 51 boys and 9 girls during an attack against the northern town of Caxito that left more than 200 people dead or missing.

53. Diamonds are also a key factor in the armed conflict in Sierra Leone. Despite the formal ceasefire, Revolutionary United Front combatants are still armed, still control important diamond-mining areas and still engage in pillaging and commit terrorist attacks — such as the renewed attack on Freetown in May 2000 — and violations of international humanitarian law. Here, again, there are foreign mercenaries involved in selling weapons to the Front and trafficking in diamonds.

54. In this situation, there should be no let-up in efforts to investigate and suppress illicit trafficking in diamonds and arms and the involvement of mercenaries in such trafficking. The Revolutionary United Front continues to use its control over diamond mines to finance its activities, which in the past few years have included the large-scale and systematic commission some of the worst crimes the world has witnessed. In March 1999, 68 tons of weapons from Ukraine, apparently destined for Burkina Faso, went in fact to Liberia and from there into the hands of rebels of the Front in Sierra Leone, in flagrant violation of the embargo imposed by the United Nations. The international community must not remain indifferent to these violations of the most basic human rights, but must investigate the possible complicity, by act or omission, of those who benefit from the illicit trafficking.

55. In that regard, it should investigate the stance of the diamond producers, diamond exchanges and associations of diamond manufacturers in relation to Angola, Liberia and Sierra Leone, as well as the firms and organizations that participate in the illicit or undercover trade in diamonds, precious stones and petroleum. It should determine their responsibility for the continuation of the armed conflicts that afflict Africa and the resulting violations of human rights and international humanitarian law. In this regard, valuable work is being done by non-governmental organizations such as Amnesty International, Doctors Without Borders and Partnership Africa Canada, Human Rights Watch, Intermón, International Action against Hunger, International Alert, Médicos del Mundo, Medicus Mundi Internationalis.

56. It is hard to believe, as some diamond manufacturers and merchants allege, that only four per cent of the world trade in rough diamonds, which amounts to seven billion dollars, is illicit in origin. In the absence of adequate, effective controls, one must assume that the percentage is actually much higher.

57. The armed conflicts affecting Angola, Liberia and Sierra Leone are not the only conflicts in the African continent. Other countries, such as Guinea, suffer from instability and the Congo is ravaged by war. Particularly noteworthy, however, is the extension of illicit traffic, particularly arms traffic, which is on the rise in all regions. Unscrupulous dealers thus benefit from the scant resources available for African development.

58. Forty-one years after the Democratic Republic of the Congo gained its independence, the civil war which besets the country and in which other African States are involved is costing the country 80 per cent of its resources. Troops from Angola, Namibia and Zimbabwe support the Government of President Joseph Kabila, while forces from Rwanda and Uganda continue to back the rebels, chiefly the Movement for the Liberation of the Congo, led by Jean-Pierre Bemba, and the Congolese Rally for Democracy, led by Adolphe Onusumba. The ceasefire agreed to in 1999 has been violated repeatedly. On the frontier with Uganda, ethnic clashes between Lendu and Hema groups continue, the latter being supported by Ugandan forces.

59. The presence of mercenaries in that country is not new. Recent studies have confirmed that Belgian, French and South African mercenaries were recruited and hired to fight side by side with the secessionist forces of Katanga led by Moise Tshombe, and that Belgian mercenaries participated in the torture and subsequent assassination of Patrice Lumumba, the first Prime Minister of the Congo. The Special Rapporteur has been studying the nature of the conflicts that affected and continue to affect Africa and proposing a global policy to safeguard the life, personal integrity, freedom and safety of individuals and ensure respect for the sovereignty of African States. The Special Rapporteur considers it advisable to continue the course mapped out in the report of the panel of experts established pursuant to Security Council resolution 1237 (1999) on the situation in Angola (S/2000/203) and by the panel of experts established by the Sanctions Committee for Sierra Leone (S/2000/756). Within this context, he stresses the need to respect the right of the peoples of Africa freely to decide their future, their political systems and the rational use that they wish to make of their resources. Otherwise, armed conflicts, together with hunger, poverty and disease, will cast their shadow over millions of Africans, threatening them like a deadly plague.

V. Current status of mercenary activities

60. Mercenary activity continues in many parts of the world and its existence is still connected with situations that affect the exercise of the right of people to self-determination, or that threaten peace and political stability or fundamental rights, such as the right to life, integrity, freedom and security. Mercenary activity continues to undermine the enjoyment of human rights of those peoples plagued by its presence. It is not an exclusively African phenomenon: mercenaries were present in the wars that took place in the territory of the former Yugoslavia and those that affected certain States that emerged from the former Union of Soviet Socialist Republics, as well as in long-term conflicts such as that taking place in Colombia and even in attempts to destabilize political regimes, such as that of Cuba.

61. In addition to the traditional ways of using mercenaries to thwart self-determination, new forms and modalities have come into being, some of which are provided with a legal façade that purports to legitimize mercenaries.

62. The expansion and modification of the modalities of mercenary activity have not led to the disappearance of the classic form, traditionally connected with attempts to thwart the exercise of a people's right to self-determination. A number of armed conflicts that have taken place in recent years, such as those occurring in the territory of the former Yugoslavia, have been marked by the presence of traditional mercenaries operating in classic guises.

63. In recent conflicts unfolding in Africa, Asia and Latin America, there has been recourse to the recruiting and hiring of mercenaries, owing to their military experience and combat efficiency. In many cases, such persons could not be qualified as mercenaries if the requirements established by article 47 of Additional Protocol I (1977) to the 1949 Geneva Conventions were applied cumulatively and concomitantly. The Special Rapporteur nonetheless considers them mercenaries, despite the fact that the existing legal definitions are vitiated by gaps and juridical shortcomings and fail to take into account situations and activities that are mercenary in nature.

64. The Special Rapporteur considers that his mandate covers every type of mercenary activity insofar as such activity is a means of violating human rights or impeding the exercise of the right of peoples to self-determination. He also considers that the United Nations should devote more time and resources to the study and analysis of new ways of using mercenaries and that the General Assembly should reiterate that mercenary activity, whatever its form or modality, is

unlawful and illegitimate and constitutes an obstacle to the enjoyment of the human rights of peoples subjected to such activities.

65. It should be pointed out that this position of the Special Rapporteur has been upheld both by the recent meeting of experts held in January 2001 and in Commission on Human Rights resolution 2001/3. Indeed the Commission considers that the presence of mercenaries should be studied and identified in connection with various criminal activities. This view strengthens the notion of the risk involved in the use of mercenaries for the perpetration of various unlawful acts and the violation of human rights and international humanitarian law, even in cases that may not be directly connected with self-determination. In accepting the suggestions made by the meeting of experts, the Commission thus strengthened the United Nations condemnation of mercenary activities.

66. Resolution 2001/3 refers also to possible connections between mercenary activities and terrorist activities. This is not a constant or systematic relationship. An analysis of cases shows that terrorist attacks are in large part carried out by militants indoctrinated and fanaticized with fundamentalist ideological concepts who view recourse to terrorism as a "legitimate" means of achieving certain objectives. Underlying many terrorist attacks is a fundamentalist conception that aims at collective intimidation by sowing fear and panic. However, there also exist terrorist acts that are simply the expression of interests of specific Governments, political organizations or entities which, in the name of the struggle against certain regimes, do not hesitate to resort to terror. Such entities resort to the use of mercenaries to commit terrorist acts.

67. Such mercenaries are not motivated by any fundamentalism, but rather by the payment which they receive for committing unlawful acts. Their experience, training and efficiency in destroying and killing render them useful for carrying out terrorist acts. In other words, the act in itself remains by nature terrorist but at the same time takes on a mercenary character owing to the agent executing it.

68. The Special Rapporteur feels that when investigating a terrorist attack one must also examine the possibility that it has been committed by a mercenary. The connection between terrorist act and mercenary activity cannot be ruled out.

69. In general, mercenary activity is not spontaneous. It usually occurs as a result of conspiracy to commit crimes. It is also commonly associated with other unlawful activities such as traffic in persons, drugs and arms. Some armed conflicts have broken out because of the existence of weapons markets that encouraged them, while others are unnecessarily prolonged for the same reason. Mercenaries are present in such traffic. Recourse is had to mercenaries for arms transport, whether as pilots, copilots, flight engineers or providers of armed security. They are also hired to act as dealers in the field or as instructors in the use of the war materiel sold.

70. Those trained in the use of armaments are usually military personnel but may also be members of guerrilla organizations or paramilitary groups with no significant military preparation. In illegal arms traffic, payment is effected in cash, but may also be in kind. In recent conflicts, weapons have been paid for with diamonds and other precious stones, petroleum or drugs, as can be seen in the cases of Afghanistan, Angola, Colombia, Liberia and Sierra Leone. The mercenary agent plays his part in such traffic without any concern as to what use will be made of the weapons or what damage they may cause. The magnitude of the phenomenon is astonishing, and the international community is not adequately protected against it. Efforts should be made to elaborate regulatory instruments for effectively thwarting that activity and to strengthen the political will to put an end to such illicit traffic.

VI. Private security and military assistance companies operating internationally

71. This topic has been a regular part of the recent reports of the Special Rapporteur. Its inclusion is due to the participation of certain security and military assistance companies in activities that constitute a threat to security and peace in a country or in a region and that hired mercenaries for that purpose. The present report, like the earlier ones, does not question the existence of such security companies, which offer a variety of services. However, it does uphold the need for national and international regulation and monitoring with a view to preventing the military participation of such companies in armed conflicts and

in related activities such as the trafficking in and sale of arms and training in the use thereof.

72. It is the Special Rapporteur's belief — and this view is generally shared by the first meeting of experts — that one of the new forms of mercenary activity is that which takes place through private security companies that hire out military services, using mercenaries for that purpose. The fact that international legal texts do not refer to this modality has facilitated its rapid expansion. At the same time, the proliferation of mercenaries hired by companies and their participation in armed conflicts, illegal arms traffic, drug traffic and violations of human rights bespeak the need for regulation, control, prevention and oversight of such companies. The United Nations must accordingly assist States in establishing mechanisms to regulate those companies and in harmonizing their national legislation.

73. It is a fact that in recent decades the State has gradually ceded its exclusive right to use force to the private sphere, so that in some regard security has been partially privatized. This phenomenon is observable primarily in relation to safety and security in cities and towns. This does not mean that the State has relinquished the provision of security, which is one of its raisons d'être, but rather that in certain respects it shares that function, while at the same time regulating it legally and setting the limits of private competency for security action.

74. The question, as can be observed today, is that there are security companies that have rapidly turned to the international market, offering to provide military services that lead them to become involved in armed conflicts and to operate in such a way that they undertake activities which intrinsically go beyond military advice and assistance and constitute acts contrary to peace and respect for human rights.

75. This is largely the result of lacunae in the international legislation in force, which can make it easy for companies to carry out operations that are in substance unlawful while alleging that they are not so. It is here that the new mercenary modalities come into play, masked by multipurpose private enterprises that hire mercenaries to offer military services that are highly specialized and efficient for war. However, international law does not provide for these new operational modalities of mercenary activity and the mercenaries are therefore professionals hired by private companies to perform specialized tasks.

76. Clearly, international rules refer to States, not enterprises. Consequently, such enterprises can claim that they are not responsible for unlawful acts with which States alone can be charged. Thus, if an enterprise hires mercenaries who commit human rights violations, the enterprise is not responsible and the violations go unpunished. This lack of precision and the difficulty of assigning responsibility must be dealt with promptly through adequate coordination and interpretation of the norms pertaining to human rights and international humanitarian law, but also by means of new international measures, if appropriate, and the national legislation of the member States. This would not only deal with the gaps and lacunae but would also resolve the issue of the alleged absence of liability of private companies that hire mercenaries in order to offer military services that lead them to intervene in armed conflicts and illicit traffic, in the context of which human rights violations are committed.

77. Even though the existing international instruments may not be the most suitable for preventing mercenary-related activities, defining mercenaries and dealing with the new modalities used by them, it would be wrong to conclude therefore that all Member States are defenceless. Firstly, it is essential to ensure that existing instruments are genuinely and effectively implemented and that those that are available, as is the case of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, come into force.

78. Secondly, States must not just note that there are gaps in their own legislation and, by doing nothing, in effect, grant carte blanche to private military security companies. This is highly irresponsible especially on the part of those countries where the most powerful private security companies that operate internationally — and that are known to have dealings with mercenaries — are concentrated and registered. In such cases, irrespective of what the situation is as regards international regulations, the State has an obligation to enact laws with a view to regulating private activity in the area of security, limiting its scope and, in particular, creating appropriate oversight and control mechanisms.

79. Indeed, at the current stage, the most direct and effective way of putting an end to impunity and

imposing normative order in this area would seem to be to develop national legislation to regulate the activities of private security firms. national legislation could or should be concerned with regulating the provision of military assistance abroad, and the conditions under which arms are exported and transported; prohibiting the hiring, or any basis, of mercenaries who, through the firms, are sent to participate in armed conflicts, and supervising the activities of those firms with a view to renewing or suspending their authorizations and licences to operate, depending on whether or not they comply with the rules governing their activities. In that way, national legislation would be the first step towards concerted action among States which would adopt common legislative models and practices. All this would, moreover, serve to expedite the updating of international standards on this subject. In this context, the United Nations can support measures to promote transparency such as the creation of registers of military security firms.

80. It is worth referring, in this connection, to the points of view and suggestions that were exchanged at the meeting of experts. There was agreement on the need to update national legislation on such firms but it was also suggested that it would be worth considering the possibility of establishing a joint regulatory body under the auspices of the United Nations responsible for registering and monitoring the activities of the private security and military firms. Those firms would obtain the authorization to operate only if they submitted to internationally agreed principles and standards consistent with international human rights standards and humanitarian law. The Member States would submit information on the firms operating outside their territory and all of them would coordinate their activity to maintain a register of firms and ensure their ability to monitor them on a day by day basis. Thus, although every State would retain the power to authorize the firms, the coordinated information on their activities would operate as an effective control of their movements. Although it is a matter requiring further study, the initiative is an interesting one and might serve to curb abuses by the firms.

81. In any case, the primary focus should continue to be on the establishment of preventive measures intended to strengthen peaceful policies, avoid violent conflicts and increase the efficiency of United Nations operations in all areas that contribute to the peaceful resolution of conflicts. This would necessarily limit the scope for the expansion of private security firms into the provision of military services and also reduce the possibility of enrolling mercenaries in such activities. The United Nations must continue to study the use of mercenaries by such firms, their recruitment and hiring practices, and the transport and financial networks they use. A list of convicted mercenaries working for such firms should also be circulated to the Member States.

VII. Contributions to the legal definition of mercenary

82. Both the General Assembly and the Commission on Human Rights have stated the desirability of studying in depth and elaborating a legal definition of mercenary which would resolve the ambiguities and difficulties of application of the definition contained in article 47 of Additional Protocol I to the Geneva Conventions of 1949 and other customary definitions which may appear in the resolutions of the United Nations General Assembly or that contained in the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, even though it has not yet entered into force.

83. The Special Rapporteur has devoted part of his time to considering this issue and has carried out bibliographical research and held interviews with representatives of States and inter-governmental organizations and with academic researchers and experts on the subject. The meeting of experts of January 2001 discussed the point extensively and a measure of agreement was reached in favour of a new definition. Although progress is not such as to indicate that a proposal is ready, we can note that there have been developments and mention those aspects on which there is already a consensus.

84. The first point on which the States and experts consulted agree is the need to condemn mercenaries and the view that the definition of mercenary contained in article 47 of Additional Protocol I to the Geneva Conventions of 1949 is inadequate. At the meeting of experts it was pointed out that, during the negotiations on Protocol I, objections were raised to the inclusion of that concept in a humanitarian convention and it was pointed out that the prohibition of the use of mercenaries should be the subject of a special treaty.

85. In earlier reports, the Special Rapporteur has referred extensively to the content of article 47 and has

pointed out its inadequacies and the difficulties of applying it. All those comments remain valid and have been reinforced by the opinions expressed at the meeting of experts; the latter pointed out that the Protocol referred to "mercenaries" but not to "mercenarism", which is a broader concept that includes the responsibilities of States and organizations concerned in the activities of mercenaries. Attention was also drawn to the difficulties inherent in the fact that mercenaries are not entitled to the status of combatants or prisoners of war. Lastly, the definition encompasses so many concurrent and concomitant requirements for characterization as a mercenary that it is impossible, in practice, to characterize anyone as a mercenary or, in any case, it is easy for mercenaries to avoid such a characterization. That being so, although at one time the definition was considered to be a first step, the current tendency is to describe it as partial, inadequate, applying only to international conflicts and inapplicable to new approaches such as the one involving the criminal responsibility of artificial persons (private security firms) that hire and employ mercenaries who violate human rights.

86. The second point on which there is consensus is the recognition that mercenary activity is not restricted to situations in which mercenaries are used to influence the right to self-determination but that it includes various types of activity which may also affect the stability of Governments, the right to the rational use of resource deposits within national territory or the enjoyment of human rights. All this may give rise to interference by mercenaries who, motivated by payment, may commit terrorist acts, attacks against persons, cultural objects or economic facilities, engage in illicit trafficking, or provoke armed or other conflicts with a view to carrying out violent and destabilizing assignments which have a profound impact on the enjoyment of human rights. Therefore, the mercenary component as a characteristic feature of criminal activity and the destabilizing effect which adversely affects human rights should be taken into account in the legal definition of mercenary.

87. The currently accepted meaning or use of the term mercenary is primarily focused on including in this rubric the hiring of the professional services of persons with a military background who are paid to intervene in an armed conflict in a country other than their own. But it has to be understood that the use of such professional services also extends to other unlawful acts such as the trafficking in persons, whether migrants or women, the trafficking in arms and munitions, drug trafficking, terrorism, acts of destabilization of legitimate Governments, acts to take forcible control of valuable natural resources, and even organized crime such as the seizure or theft of vehicles on a large scale. Any revision of the legal definition of mercenary should take this into account and suggest a concept that is broad enough to encompass the various types of crimes involving a mercenary component.

88. The third point concerns payment which is, without any doubt, the defining factor of mercenary status and activity. Mercenaries, particularly those who are hired to participate in combat or to train those who are to make up battalions, columns or commando units are typically individuals who have been in the military or who have received military training, and above all who are former members of special commando or parachute units and have experience in the use of sophisticated weapons. The mere fact that it is a Government that recruits mercenaries, or hires companies that recruit mercenaries, either in its own defence or to provide reinforcements in armed conflicts, does not make such acts any less illegal or illegitimate. Governments are authorized to operate solely under the Constitution and the international treaties to which they are parties. This point of view should be taken into account in a broader legal definition of mercenaries.

89. With respect to the nationality requirement there is still no consensus. The aim of the rules of customary international and treaty law is, in essence, to combat mercenary acts in the broad sense of the buying and selling of military services that are not subject to the prevailing rules of international humanitarian law and that are likely to lead to war crimes and human rights violations. If nationals of the affected country are used, they cannot, strictly speaking, be considered mercenaries. That has been the position hitherto. However, this requirement is under discussion. If nationals are recruited for the clear purpose of being used, as mercenaries, and the only impediment to their being labelled as such is the fact that they are nationals of the affected country, then the rule should disregard nationality and focus primarily on the mercenary nature of the act itself. Thus, the requirement to be a non-national of the country in which the mercenary becomes involved should be reviewed and analysed more deeply so as to give greater weight in the

definition to the nature and purpose of the illicit act with which an agent is paid to be associated. It is to be noted in this connection that the meeting of experts agreed that the situation should be analysed and discussed in more detail. In short, the information summarized here, although it is not complete, demonstrates the need to establish a legal definition of mercenaries that includes the various forms of mercenary action to ensure that mercenarism is effectively penalized and curbed by the law.

VIII. Current status of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries

90. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which the General Assembly adopted by resolution 44/34 of 4 December 1989, has yet to enter into force even though almost 12 years have elapsed since its adoption. Nevertheless, 21 States have either ratified or acceded to it. This means that it requires ratification or accession by only one more State to enter into force. That is important since the Convention would give mankind yet another international instrument for the protection of human rights.

91. Despite the objections to the definition contained in article 1, the Special Rapporteur believes that it would be easier to improve this important instrument if it were to enter into force in the near future. The early entry into force of the Convention could be the starting point in efforts to address recent mercenary activities that have remained unpunished. The Convention would facilitate preventive cooperation among States, better identification of situations involving mercenaries and the clear determination of jurisdiction in each case and will facilitate procedures for the extradition of mercenaries and the effective prosecution and punishment of offenders.

92. As noted above, 21 States have completed the formal process of expressing their willingness to be bound by the International Convention. Those States are: Azerbaijan, Barbados, Belarus, Cameroon, Croatia, Cyprus, Georgia, Italy, Libyan Arab Jamahiriya, Maldives, Mauritania, Qatar, Saudi Arabia, Senegal, Seychelles, Suriname, Togo, Turkmenistan, Ukraine, Uruguay and Uzbekistan. Nine other States have signed the International Convention, but have not yet ratified it. They are: Angola, Congo, Democratic Republic of the Congo, Germany, Morocco, Nigeria, Poland, Romania and Yugoslavia.

IX. Conclusions

93. General Assembly resolution 55/86 of 4 December 2000 and Commission on Human Rights resolution 2001/3, adopted on 6 April 2001 at its fifty-seventh session, are confirmation of the concern of the United Nations at the existence of mercenary activities which threaten the right of peoples to self-determination and their effective enjoyment of human rights. The text of the Commission's resolution confirms that such activities are adopting new forms, manifestations and modalities. The terms of the renewal of the mandate of the Special Rapporteur on mercenary activities for a period of three years include consideration of cases of the use of mercenaries that threaten the right of peoples to self-determination as well as all new forms adopted to extend mercenary activities.

94. The first meeting of experts convened by the Office of the High Commissioner for Human Rights in compliance with resolutions 54/151 of the General Assembly and 2000/3 of the Commission on Human Rights was a very useful forum for the in-depth study of the use of mercenaries and the serious harm caused to peoples that suffer from it. The final report of the experts includes substantive aspects relating to the need to develop an updated and satisfactory legal definition of mercenaries. It also contains aspects relating to the various ways in which the use of mercenaries affects self-determination and human rights. In that context, the experts regard mercenary activities as illicit and likely to lead to the violation on a massive scale of human rights among populations affected by such activities.

95. The meeting of experts suggested that the mandate of the Special Rapporteur should be broadened and that a distinction be made between the traditional approach involving self-determination and the approach addressing the question of private international security firms that recruit mercenaries and the range of phenomena involving criminal activity by mercenaries: unlawful trafficking, terrorism, organized crime, and so forth. The resolution of the Commission on Human Rights which renews the mandate of the

Special Rapporteur is broadly consistent with that approach.

96. It was assumed that the end of colonialism, the cold war and apartheid would relieve the sufferings of many African peoples; instead, the situation has deteriorated further, particularly in the western portion of the continent, rich in high-quality diamonds and mineral and petroleum resources, which arouse the greed of unscrupulous politicians, merchants operating in the global market and criminal gangs who enrich themselves by plundering and smuggling gems and precious stones. Mercenaries take part in the plundering and carry out many of the criminal operations.

97. Attempts to impede the self-determination of the African peoples and to destabilize legitimate governments are still occurring in some countries, and in these situations mercenary forces generally play an active role. In addition, however, conflicts have arisen over access to and control of natural resources such as petroleum, uranium, magnesium, bauxite and, above all, precious stones. Those who wish to exploit these resources do not hesitate to stir up conflicts, to arm and finance rebel groups and to hire mercenaries. The armed conflicts not only set at odds groups within the country and other States in the conflict regions but also draw in those in Europe who control the markets in precious stones and especially diamonds.

98. One of the most egregious attempts to exploit the riches of Africa is that of UNITA in Angola. This rebel force is one of the biggest employers of mercenaries. In the territories under its control it extracts and sells unlimited quantities of diamonds, despite the United Nations embargo, and it uses mercenaries to smuggle diamonds to European markets, primarily through Antwerp. The proceeds of the illicit trade enable UNITA to continue the war that is bleeding Angola dry.

99. Diamonds are also a key factor in the armed conflict in Sierra Leone. Despite the ceasefire, Revolutionary United Front combatants are still armed, still control important diamond-mining areas and still engage in pillaging, terrorist attacks and violations of international humanitarian law. As in other conflicts, mercenaries are involved in the diamond trafficking and the sale of weapons to the Front.

100. Although the traditional use of mercenaries to impede the exercise of the right of a people to self-determination has by no means disappeared, mercenary activity has expanded and assumed new forms in the armed conflicts occurring in Africa.

101. In both traditional and new forms of mercenary activity, the recruitment and hiring of mercenaries are facilitated by gaps in the law. Article 47 of Additional Protocol I of 1977 to the Geneva Conventions has proved inadequate. Despite the gaps and deficiencies in existing legal definitions, it is, however, possible to assemble information and evidence that may help in identifying mercenaries and banning their activities.

102. The need to act more effectively against mercenary activities makes it advisable to determine where mercenaries are involved in a number of criminal activities that violate human rights and the rules of international humanitarian law. In investigating terrorist attacks, consideration should be given to the possibility that they may have been committed by mercenaries. A link between terrorism and mercenary activity cannot be ruled out.

103. Mercenary activity often comes about as the result of a conspiracy to commit such crimes as trafficking in persons, drugs and weapons. Some armed conflicts have erupted because there exist markets in weapons to fuel them. Others have been unnecessarily protracted for the same reason. Mercenaries are actively involved both in arms trafficking and in training others in the use of the weapons sold.

104. Although the existence of private companies that offer security services on the international market is not illegal in itself, it is worrisome that such companies, in the absence of national and international regulation, hire mercenaries to engage in secret and prohibited deals, involving their employees in active participation in armed conflicts, illicit arms and drug trafficking and human rights violations. That aspect of the conduct of private companies goes beyond military assistance and advice to encompass acts that threaten the peace and violate human rights.

105. States should not point with a shrug to gaps in their national legislation and passively allow private military security firms to branch out into mercenary activities. To allow that to happen is highly irresponsible, especially on the part of those countries where the most powerful private security companies that operate internationally — and that are known to have dealings with mercenaries — are concentrated and registered. If there are gaps in the law, such States have an obligation to pass legislation to regulate

private security activity, limit its scope and set up adequate oversight and control mechanisms.

106. With regard to private security companies, national legislation is the first step towards concerted action by States, which should follow model laws and common practices. International rules on the subject can then be updated more rapidly.

107. The first meeting of experts on mercenary activities made important contributions towards a better legal definition of the subject. Among those contributions was the notion that the terms to be defined should comprise not only the mercenary as an individual, but also mercenarism, a broader concept encompassing the responsibilities of the States and organizations concerned in mercenary activities. Such activities may be a factor in either international or internal conflicts; their scope is broad and can affect self-determination and human rights in a variety of ways. Lastly, a mercenary may be characterized as a person knowledgeable in military matters or in the use of firearms who places that knowledge and experience at the service of a third party who hires him to undermine the exercise of self-determination in a given State, destabilize its legitimate government, destroy infrastructure or harm persons through acts of terrorism, and possibly to participate in illicit trafficking. The distinguishing factor is payment, which defines the nature of the act. A mercenary is a criminal agent who is paid to commit crimes and undermine human rights.

108. Although up to now the tendency has been to assume that an individual must be a national of a country other than that in which he is operating in order to be considered a mercenary, that notion is currently under review. It is felt that the nationality requirement should be set aside when it is clear that nationals are being paid to act against their own country, with the result that those who are, in fact, acting as mercenaries, avoid being labelled as such.

109. Despite the limitations of the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the international community would be benefited if it were in force. To date, 21 States have signed it. Only one more ratification or accession is needed for it to enter into force.

X. Recommendations

110. In view of the conceptual advances and proposals that emerged from the first meeting of experts on mercenary activities, it is recommended that the General Assembly should express its satisfaction at the results obtained at the meeting and reaffirm its decision to request the Office of the United Nations High Commissioner for Human Rights to convene a second expert meeting pursuant to General Assembly resolution 54/151, so that the experts can deepen their analysis and formulate specific proposals for a legal definition of mercenaries and other related matters.

111. In view of the suggestions that emerged from the first expert meeting and the text of Commission on Human Rights resolution 2001/3, it is recommended that the Special Rapporteur should continue to study mercenary activities as a means of impeding the exercise of the right of peoples to self-determination but should also take into account other situations in which mercenaries are involved, including illicit trafficking, terrorism, the use of mercenaries by private security companies to intervene in the internal affairs of States and organized crime.

112. It is recommended that the General Assembly should reaffirm its full support for the self-determination of the African peoples and their right to live in peace, to benefit from the development that can result from the rational use of their own natural resources and to have their legitimate governments respected and stable, and in that regard it should condemn the mercenary activities frequently organized with the aim of undermining the rights of the African peoples.

113. It is also recommended that the General Assembly, to further respect for the sovereignty of the peoples of Africa and their right to peace, should alert States in which diamond-mining companies operate, diamond exchanges, associations of diamond merchants and all others involved in the illicit trade in diamonds and other precious stones to the evidence of unscrupulous business practices in the exploitation and sale of diamonds and the reports of their responsibility for the persistence of armed conflicts in Africa, with consequent violations of human rights and international humanitarian law. It is well known that mercenaries are involved in the illicit activities carried out by such firms.

114. Since mercenaries are also used in acts of terrorism, it is further recommended that the mercenary aspect should be reflected in United Nations analysis, follow-up and resolutions on terrorism. The same concern should be reflected in national legislation. The Special Rapporteur will keep abreast of developments in combating terrorism and coordinate with the United Nations bodies dealing with terrorism.

115. In view of the many ways in which mercenaries are used, it is recommended that special attention should be paid to combating their involvement in illicit arms trafficking, which serves to fuel and prolong armed conflicts. With his experience the mercenary agent enhances the frequency and volume of illicit arms deals. That being the case, more effort must be put into developing legal instruments to facilitate prosecution of that crime and mobilizing the political will of States to suppress that illicit traffic effectively.

116. It is a fact that more and more mercenaries are being hired by private security companies operating in the international market for deployment in armed conflicts, illicit trafficking and human rights violations. This situation underlines the need for regulation, prevention, control and oversight of such companies. The regulatory mechanisms must be set up through national legislation, in coordination with the United Nations and with its support.

117. In view of the changes in the mandate and the progress made towards a legal definition of mercenary, it is recommended that the General Assembly should instruct the Special Rapporteur, with the support of the second expert meeting, to propose a new definition, relating both to the mercenary and to the more complex phenomenon of mercenarism. The proposal should include a clear nationality criterion and a suggestion on the procedure to be followed for international adoption of a new definition.

118. Notwithstanding any progress in updating the definition of mercenary, the General Assembly should urge Member States to ratify or accede to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. The Convention is short only one ratification or accession for entry into force, which would facilitate the banning of such activities and create an international climate more favourable to self-determination and defence of human rights.